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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

CHRISTOPHER PARKER,
Plaintiff and Appellant,

v.

LOGITECH, INC.,
Defendant and Respondent.

A153147

(Alameda County
Super. Ct. No. RG15781276)

Plaintiff Christopher Parker appeals from the trial court’s refusal to certify as a class action what plaintiff describes as “a routine consumer-fraud case about misleading advertising and [defendant] Logitech’s failure to disclose material information to consumers *before* they spent hundreds of dollars purchasing Logitech’s expensive home-security systems.” After reviewing the exhaustive record of conflicting evidence before the trial court with respect to the certification motion, we cannot say that the court’s conclusion that common issues of fact do not predominate constitutes the “manifest abuse of discretion” that is required for reversal. We shall therefore affirm the order.

Background

Plaintiff’s amended complaint alleges that “[i]n August 2010, Logitech began the sale and distribution of high-definition digital video security systems under the ‘Alert’ brand name (‘Alert Systems’). Logitech packaged the Alert System[s] . . . as a complete home video security system that would allow customers to ‘Be There When You’re Not.’ ” Logitech told customers, the complaint alleges, “that Alert Systems would provide them with safety and security features such as motion detection alerts, plus live

and recorded video feeds to any internet connected computer, smartphone or tablet, which would allow customers to monitor their home security cameras remotely.” Whereas, the complaint continues, “Customers inundated Logitech’s forum with complaints about the functionality and efficacy of the Alert Systems that rendered the Alert Systems inoperable and unable to provide reliable security services. Among other things, customers reported experiencing problems that included: (1) difficulty installing and setting up the cameras and software; (2) cameras that would not turn on, stay powered up, or record video properly; (3) failures of the micro SD cards installed in the cameras; (4) connectivity problems between the cameras; (5) problems with inoperable or faulty motion sensors; (6) problems downloading video; (7) incoming video that would freeze; (8) poor picture quality; (9) delayed alerts; (10) errors in the camera’s timestamps, and; (11) software bugs and glitches that made the systems inoperable.”

The amended complaint alleges five causes of action, for violations of California’s Unfair Competition Act (Bus. & Prof. Code, § 17200 et seq.), the Consumer Legal Remedies Act (Civ. Code, § 1750 et seq.), and the Song-Beverly Consumer Warranty Act (Civ. Code, § 1790 et seq.), and for breaches of express and implied warranties.

In denying plaintiff’s motion to certify a class defined as “All purchasers of Logitech Alert Systems in the State of California within the past four years,”¹ the court issued an order addressing each of plaintiff’s causes of action. In holding plaintiff’s unfair competition and Consumer Legal Remedies Act claims unsuited for class treatment, the court stated, among other things, that “[i]n order to pursue relief as a class action, plaintiff must demonstrate a common defect with Alert Systems that caused the product to malfunction. (See, e.g., *American Honda Motor Co. Inc. v. Superior Court* (2011) 199 Cal.App.4th 1367, 1376.) Rather than identify a common defect that caused Alert Systems to malfunction, plaintiff suggests five different potential problems with the product. . . . Plaintiff’s identification of five different potential problems with Alert

¹ The amended complaint did not define or request certification of any subclasses, although in plaintiff’s trial court briefing he suggested the possibility of creating subclasses.

Systems would result in the necessity of resolving diverse factual issues in litigating this case, because it would require a determination of which putative class members suffered which defects at what time, the extent to which those various defects disrupted their Alert Systems service, and for how long. The answers to those questions, in turn, may affect the relief to which each putative class member[] would be entitled. [¶] Similarly, plaintiff's claims based on defendant's alleged poor management of its customer service center and failure to fully honor its warranty obligations would involve diverse factual issues including what specific problems the putative class members suffered with Alert Systems, the relief they sought from customer service, and the response they received." As to the allegation that Logitech had failed to timely disclose its intention to discontinue the product, which it did in 2014, the court expressed doubt that the company was under a duty to do so but on the assumption that it was, held that "proving a claim based on that theory would involve diverse factual issues, including, inter alia, the extent to which each member of the putative class expected that defendant would continue to market Alert Systems indefinitely (and why), and how he or she was damaged by defendant's decision."

In finding the Song-Beverly Consumer Warranty Act claims unsuitable for class treatment, the court again referred to the diversity of "the various alleged material defects" and of alleged customer service complaints and warranty claims. With respect to plaintiff's request for an injunction requiring Logitech to maintain repair service facilities for the Alert Systems for at least seven years from the manufacture of the product, as required by Civil Code section 1793.03, the court observed, "he does not need to have this case certified as a class action to do so."

As to the breach of warranty claims, the court found that plaintiff had "not shown a well-defined community of interest that supports class certification" because those claims involve "diverse factual issues, including what specific problems the putative class members suffered with Alert Systems, when they experienced those problems and whether they occurred within the one year express warranty period, the relief they sought from customer service, and the response they received. Plaintiff has not made any

showing that every single member of the class as defined, i.e., all purchasers of Alert Systems since August 10, 2011, experienced any such problems within one year of purchase.”

Plaintiff has timely appealed from the order denying class certification, as he is entitled to do. (*Telez v. Rich Voss Trucking, Inc.* (2015) 240 Cal.App.4th 1052, 1061.)

Discussion

The legal framework within which we must evaluate this appeal was succinctly summarized in *Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069 as follows. “The decision to certify a class rests squarely within the discretion of the trial court, and we afford that decision great deference on appeal, reversing only for a manifest abuse of discretion: ‘Because trial courts are ideally situated to evaluate the efficiencies and practicalities of permitting group action, they are afforded great discretion in granting or denying certification.’ [Citation.] A certification order generally will not be disturbed unless (1) it is unsupported by substantial evidence, (2) it rests on improper criteria, or (3) it rests on erroneous assumptions. [Citations.] [¶] Class certification requires proof (1) of a sufficiently numerous ascertainable class, (2) of a well-defined community of interest, and (3) that certification will provide substantial benefits to litigants and the courts, i.e., that proceeding as a class is superior to other methods. [Citations.] In turn, the ‘community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.’ ” (*Id.* at p. 1089.)

Here, the trial court denied certification because after reviewing the parties’ lengthy submissions the court found that common issues do not predominate. In this, as in most, cases there undoubtedly are factual issues common to the claims of most if not all putative class members and there are factual questions that are unique to the claims of individual members, or perhaps to groups of members. Whether the common issues preponderate and class treatment will facilitate trial and resolution of the claims is largely a matter of judgment. Understandably, the parties cite cases in which the judgment call in

the particular case was made as each contends it should be made here. (Compare, e.g., *Hewlett-Packard Co. v. Superior Court* (2008) 167 Cal.App.4th 87, 95 [class certified where “[t]he crux of plaintiff’s claim is that certain HP notebook computers contained types of inverters that HP knew would likely fail and cause the screens to dim and darken at some time before the end of the notebook’s ‘useful life’ ”]; *In re Lenovo Adware Litigation* (N.D.Cal. 2016) 2016 U.S. Dist. Lexis 149958, *71 [class certified where “plaintiffs contend that all versions [of laptop containing software with performance, privacy and security issues] had the same performance and privacy effects”]; *Wolin v. Jaguar Land Rover North America, LLC* (9th Cir. 2010) 617 F.3d 1168, 1172 [class of car buyers certified where “[t]he claims of all prospective class members involve the same alleged defect, covered by the same warranty, and found in vehicles of the same make and model”]; *Keegan v. American Honda Motor Co., Inc.* (C.D.Cal. 2012) 284 F.R.D. 504, 523 [certification of class of car buyers granted where “[p]laintiffs contend that all class members’ claims involve the same design defect, the same warranty, and the same class vehicles”]; *Wolph v. Acer America Corp.* (N.D.Cal. 2011) 272 F.R.D. 477, 484 [class of notebook computer purchasers conditionally certified where “the claims of the proposed class stem from the same set of core facts as to whether Acer sold notebook computers with the alleged defect during the class period”]; with *American Honda Motor Co., Inc. v. Superior Court* (2011) 199 Cal.App.4th 1367, 1378 [certification of putative class of car purchasers who experienced third gear problems reversed where “whether each proposed class member’s third gear malfunctioned, if it will malfunction, how it malfunctioned and why it malfunctioned are individual questions not amenable to common proof”]; *Cholakyan v. Mercedes-Benz, USA, LLC* (C.D.Cal. 2012) 281 F.R.D. 534, 553 [certification of putative class of owners of cars damaged by water leakage denied where “no evidence that a single design flaw that is common across all of the drains in question is responsible for the alleged water leak defect”]; *Kramer v. Toyota Motor Corporation* (9th Cir. 2016) 668 Fed. Appx. 765, 766 [certification of putative class of owners of cars with defective brake systems denied because “[w]ithout any evidence of a common defect, there are no ‘common questions of law or fact’ binding the

proposed class together”]; and *Brenner v. Future Graphics, LLC* (N.D.Ga. 2007) 258 F.R.D. 561, 573 [certification of putative class of remanufactured ink cartridge distributors denied as to breach of warranty claims because “[t]his is not a case in which a single defect is contained within every identical product such as a tire with a faulty tread. . . . [T]he factual issues with regard to proving a product defect are going to be individualized and dependent upon the makeup of each shipment sent to each Class member.”].)

The trial court properly considered and denied the certification motion in this case separately with respect to each of plaintiff’s five causes of action. We need not extend this opinion by discussing the common or unique features of each element of each cause of action because the trial court did not abuse its discretion in deeming the multiplicity of alleged defects in the Alert Systems central to each of the causes of action and their analysis to predominate over all other issues in the case. Nor need we agree with the contention that a single common defect is a sine qua non for a determination that common issues predominate. Although a single defect or inter-related defects were alleged in most of the cases in which certification was granted, and was absent where certification was denied (see cases cited, *ante*), we may assume that plaintiff is correct that if a number of diverse defects render a product fundamentally defective and unusable, or “substantially certain to result in a malfunction during the useful life of the product” (*American Honda Motor Co., Inc. v. Superior Court* (2011) 199 Cal.App.4th 1367, 1375), there may be controlling common issues that render class treatment of unfair competition, Consumer Legal Remedies Act and warranty claims appropriate. However, the record does not reflect that to be the situation here.

The record contains substantial evidence that as the Alert Systems evolved, a number of different problems were encountered and addressed. Logitech unquestionably received complaints about different features, but the evidence fails to show that the product was so fundamentally defective that most users found it unusable or that it was likely to fail during its useful life. Rather, the record indicates that different users experienced different problems with their units at different times, that various revisions in

the product were made over time so that not all putative class members purchased identical products, and that most users apparently did not encounter the difficulties that plaintiff experienced. As summarized by the former business unit general manager of the Digital Video Surveillance (DVS) Group, “I understand that [plaintiff] is seeking to represent a class of Alert consumers relating to numerous alleged defects with the Alert products, such as SD card problems, flash memory defects, design defects, server outages, software defects, firmware defects, and ‘other’ undefined defects. During the time period of the alleged defects (2011 to the discontinuance of the product line), Logitech sold three different product models. I am unaware of Mr. Parker differentiating the alleged list of problems between the three product models. I am also unaware of any factual basis to claim that the Alert system is a fundamentally defective product (or anything close to it). If anything, the alleged issues identified by Mr. Parker are non-material anecdotal issues that were managed in the ordinary course of our work. The varied list of alleged issues demonstrates that, even on Mr. Parker’s view, different consumers would have had different experiences with the Alert system.”

With respect to one survey reporting a large number of users experiencing complaints, the general manager stated: “The mere fact that 59% of users reported experiencing a problem at any point with their Alert system . . . is neither surprising nor cause for concern. . . . [T]he cameras are designed to be self-installed and there are any number of issues which could have arisen with the Alert which were unrelated to Logitech or to an actual problem with the product. The percentage of users experiencing a problem does not indicate a defect in the product, nor does it indicate that many or most consumers experienced the same problems in the same way.”²

² With respect to complaints concerning the SD cards used in the Alert Systems, the general manager added: “each consumer can customize the camera’s motion sensitivity and depending on the setting selected, generate more or fewer recordings, that would necessarily impact a consumer’s experience with the SD card, i.e., it could wear out quicker based on the amount of recording resulting from customer settings. The Alert Systems cameras are designed to record video footage on the SD card when motion is detected and, once full, to recycle old videos for new ones up to the full capacity of the

The record contains internal documents and statistics that support these conclusions. The record also contains evidence of positive consumer satisfaction surveys and product awards. Importantly, the record does not contain evidence that a significant percentage of Alert Systems purchasers found the product unusable or fundamentally defective. There was ample evidence that consideration of the claim that Logitech engaged in the unfair practice of knowingly marketing a defective product and breached its warranty obligations will require individualized consideration of many different alleged defects and complaints and of the company's response to those sundry complaints.

The same is true for consideration of whether Logitech misrepresented the product to the public. Plaintiff alleges no misrepresentation about a specific feature of the Alert Systems, but only allegedly false claims that the system provided "peace of mind in a box," was "simple to use and install," and would provide customers with "safety and security." Putting aside the issue of reliance on such puffery, the underlying question of whether Logitech "conceal[ed] from consumers information that they would reasonably want to know, including that the defects permeating the Alert meant that it could not perform as the complete and dependable home-security system that Logitech represented it to be" can hardly be considered without addressing the myriad of defects that plaintiff ascribes to the product. The trial court did not abuse its discretion in concluding that there is no community of interest justifying class treatment of these claims.

The multiplicity of individual issues presented by the warranty causes of action would be still greater—requiring consideration not only of the particular problem encountered by each class member but of the adequacy of Logitech's response to each complaint or service request. Whether Logitech has failed to comply with its obligation

SD card. If more on-camera recording capacity was needed a customer could replace the included SD card with a compatible higher capacity SD card of their own choosing. The alert cameras could be adjusted in two ways for motion sensitivity Depending on the customer's own settings, and desire for available on-camera recordings, each customer would have necessarily had a different experience with their SD card."

under the Song-Beverly Consumer Warranty Act to maintain service and repair facilities for seven years from manufacture of the product (Civ. Code, § 1793.03) presents a common issue, but, if true, consideration of the impact of such failure on individual class members would require far more individualized attention than application of a formula to measure damages. Moreover, as the trial court correctly observed, the injunctive relief plaintiff seeks can be obtained without class certification. The trial court cannot be faulted for refusing to find class treatment the superior means of addressing the warranty claims.

In short, we find no abuse of discretion in the trial court's determination that certification of a class is not appropriate in the present case.

Disposition

The order denying class certification is affirmed.

POLLAK, P. J.

WE CONCUR:

STREETER, J.

TUCHER, J.